

RAMVILAS

A

v.

STATE OF M.P.

(Criminal Appeal Nos. 1786-1787 of 2009)

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AUGUST 18, 2015

**[T.S. THAKUR AND R. BANUMATHI, JJ.]**

*Penal Code, 1860: s.302 r/w s.149, 324, 323 r/w s.149 and 148 – Murder – Victim-deceased attacked by the appellants and other accused by lathis, pistol and spears – When his family members tried to save him, they also received injuries – Deceased succumbed to injuries – Conviction by courts below – On appeal, held: All the eye witnesses consistently spoke about the occurrence and the overt acts of the accused including the appellant – Courts below recorded the concurrent findings of fact observing that the testimony of eye witnesses was credible and trustworthy – Prosecution witnesses being injured, their presence at the place of incident cannot be doubted – Conviction of appellant was based on evidence of injured witnesses which was amply corroborated by the evidence of eye-witnesses and medical evidence – Interference with order of conviction not called for.*

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*Evidence: Injured witness – Testimony of, evidentiary value – Held: Evidence of injured witnesses is entitled to great weight and very cogent and convincing grounds are required to discard such evidence.*

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**Dismissing the appeals, the Court**

**HELD: 1. In the incident, PW-3 and PW-5, sister of the deceased sustained injuries. PW-3 and PW-5 being injured witnesses, their presence at the time and place**

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A of occurrence cannot be doubted. Evidence of the  
 injured witnesses is entitled to a great weight and very  
 cogent and convincing grounds are required to discard  
 the evidence of the injured witnesses. There is no  
 ground to disbelieve the evidence of injured witnesses  
 B PW-3 and PW-5. [Para 6] [209-E-F]

2. As observed by the High Court all the eye  
 witnesses have spoken in one voice so far as carrying  
 of 'katta' by appellant and, therefore, his presence at the  
 C scene of occurrence cannot be doubted merely because  
 no 'katta' was recovered from him. It came out in the  
 evidence that the appellant had exhorted the other  
 accused in attacking the deceased and also actually  
 participated in the attack. As pointed out by the courts  
 D below that the appellant nowhere pleaded in his  
 examination under Section 313 Cr.P.C. that he was  
 neither present at the scene of occurrence nor involved  
 in the incident. The conviction of the appellant is based  
 on the evidence of injured witnesses which is amply  
 E corroborated by the evidence of eye witnesses and  
 medical evidence. Conviction of the appellant is based  
 on proper appreciation of evidence and courts below  
 have recorded concurrent findings and the same is not  
 F liable to be interfered with in exercise of power under  
 Article 136 of the Constitution of India. [Paras 7, 8] [209-  
 H; 210-A-D]

CRIMINAL APPELLATE JURISDICTION : Criminal  
 Appeal Nos. 1786-1787 of 2009

G From the Judgment and Order dated 09.10.2007 of the  
 High Court of Madhya Pradesh at Jabalpur in Criminal  
 Application Nos. 377 and 481 of 1995

WITH

H Crl. A. No. 1788-1789 of 2009

Ajay Veer Singh, R.K. Verma, Rakesh Kumar Khare, Atul Agrawal, Naresh Kumar, Mohd. Irshad Hanif for the Appellant. A

Arjun Garg, Mishra Saurabh for the Respondent.

The Judgment of the Court was delivered by B

**R. BANUMATHI, J.** 1. In these appeals, the appellants challenge the correctness of the judgment passed by the High Court of Madhya Pradesh at Jabalpur in Criminal Appeals No.377 of 1995 and 481 of 1995 whereby the High Court confirmed the conviction and sentence awarded to the appellants by the trial court under Sections 302 read with Section 149 IPC, 324, 323 read with Section 149 IPC and 148 IPC. C

2. Case of the prosecution is that on 23.07.1991 at about 7.00 O'clock in the morning at village Hathighat, deceased-Bansilal had gone towards the riverside to attend nature's call. One Harisingh Kachhi (PW-7), Jagdish (PW-13) and Noor Khan (PW-9) came to the house of Narmada Prasad (PW-3) and informed him that the accused-appellants were assaulting his brother-Bansilal. Narmada Prasad (PW-3) immediately rushed to the spot alongwith them and near 'otla' of Hardul Baba, he noticed that all the appellants armed with lethal weapons had surrounded his brother-Bansilal. Appellants Chhotelal, Kailash and Suresh were armed with spears, appellant-Ramvilas was armed with pistol, whereas appellants Ramsingh and Gorelal were carrying *lathis* with them. When Bansilal tried to escape, appellant-Ramvilas fired a shot from his pistol and when Bansilal fell down, appellants Chhotelal and Kailash attacked him with spear on his scalp and forehead. When Narmada Prasad (PW-3) tried to intervene, appellant-Kailash attacked Narmada Prasad with spear and caused injury below his right eye. Then Uma Bai (PW-5) sister of the deceased and Sona Bai-mother of the D  
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A deceased tried to save Bansilal, the appellants Kailash and Ram Singh also attacked them. Appellant-Ramvilas intimidated and threatened the persons present there and said that if anybody would intervene, he would be shot dead. The appellants gave repeated blows to Bansilal by spear and *lathis* and then fled away. Injured Bansilal was immediately taken to the hospital where he was declared dead. On the complaint lodged by Narmada Prasad (PW-3), brother of the deceased; FIR was registered in Criminal Case No.131 of 1991 under Sections,147, 148, 149, 341 and 302 IPC at PS Nasirullahganj. After due investigation, the appellants were prosecuted under Sections 148, 302, 302 read with Section 149, 324, 324 read with Section 149, 323 and 323 read with Section 149 IPC.

3. Upon consideration of the evidence, the trial court convicted the appellant-Ramvilas and other accused under Sections 302 read with Section 149, 324, 323 read with Section 149 and 148 IPC and sentenced them to undergo life imprisonment and further imposed sentence of imprisonment for other offences. On appeal, the High Court confirmed the conviction of the appellants and also the sentence of imprisonment imposed on each of them. These appeals assail the correctness of the impugned judgment. On application filed on behalf of the appellants, the appeal was dismissed as withdrawn qua the appellants Suresh (A1), Kailash (A2) and Ram Singh (A4) by the Chamber Judge Order dated 18.02.2013.

4. We have heard the arguments of Mr. Ajay Veer Singh, the learned counsel for the third appellant-Ramvilas and also the learned counsel appearing for the State. We have carefully considered the rival contentions and perused the evidence on record and also the impugned judgment.

5. Conviction of the appellant-Ramvilas and other accused

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is based mainly on the evidence adduced by six eye witnesses, namely, Narmada Prasad (PW3), Rekha Bai(PW-4), Uma Bai (PW-5), Hari Singh (PW-7), Noor Khan (PW-9) and Jagdish (PW-13) coupled with other corroborative evidence. All the eye witnesses have consistently spoken about the occurrence and the overt acts of the accused including the appellant-Ramvilas. Courts below have recorded the concurrent findings of fact observing that the testimony of eye witnesses is credible and trustworthy. Deceased-Bansilal had sustained as many as twenty six injuries. Evidence of eye witnesses is amply corroborated by medical evidence. By perusal of the records, no cogent reasons are forthcoming to disbelieve the testimony of the eye witnesses and we find no reason to interfere with the concurrent findings recorded by the courts accepting the evidence of eye witnesses as trustworthy.

6. In the incident, Narmada Prasad (PW-3) and Uma Bai (PW-5) sister of the deceased sustained injuries and Ex.P-9 and Ex.P-10 are the MLC Reports of Narmada Prasad (PW-3) and Uma Bai (PW-5) respectively issued by Dr. S.K. Dhoble (PW-10). Narmada Prasad (PW-3) and Uma Bai (PW-5) being injured witnesses, their presence at the time and place of occurrence cannot be doubted. Evidence of the injured witnesses is entitled to a great weight and very cogent and convincing grounds are required to discard the evidence of the injured witnesses. We do not find any ground to disbelieve the evidence of injured witnesses Narmada Prasad (PW-3) and Uma Bai (PW-5).

7. Learned counsel for the appellant Mr. Ajay Veer Singh contended that the presence of appellant-Ramvilas at the scene of occurrence was doubtful as no 'katta' was seized from him nor any gun shot injury was found on the person of deceased-Bansilal. As observed by the High Court all the eye witnesses have spoken in one voice so far as carrying of 'katta'

- A by appellant-Ramvilas and therefore his presence at the scene of occurrence cannot be doubted merely because no '*katta*' was recovered from him. It has come out in the evidence that the appellant-Ramvilas had exhorted the other accused in attacking the deceased and also actually participated in the
- B attack. As pointed out by the courts below that the appellant-Ramvilas nowhere pleaded in his examination under Section 313 Cr.P.C. that he was neither present at the scene of occurrence nor involved in the incident.
- C 8. The conviction of the appellant-Ramvilas is based on the evidence of injured witnesses which is amply corroborated by the evidence of eye witnesses and medical evidence. Conviction of the appellant is based on proper appreciation of evidence and courts below have recorded concurrent
- D findings and the same is not liable to be interfered with in exercise of power under Article 136 of the Constitution of India.

9. These appeals are dismissed.

E Devika Gujral

Appeals dismissed.